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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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**AYOOLA AJAYI,**

**Plaintiff,**

**v.**

**BART MORTENSEN et al.,**

**Defendants.**

**MEMORANDUM DECISION AND  
ORDER**

**Case No. 2:24CV00366-DAK**

**Judge Dale A. Kimball**

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Mr. Ajayi has filed several motions, all of which are denied. First, he has filed a Motion to Appoint Counsel.<sup>1</sup> Because this is a civil case, Mr. Ajayi has no constitutional right to counsel.<sup>2</sup> The court, however, may, in its discretion, appoint counsel for indigent inmates.<sup>3</sup> "The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel."<sup>4</sup> When deciding whether to appoint counsel, a variety of factors should be considered, "including the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims."<sup>5</sup>

Considering these factors, the court concludes that (1) it is not clear thus far that Mr. Ajayi has asserted a colorable claim; (2) the issues here are not complex; and (3) Mr. Ajayi is not necessarily unable to adequately function to pursue this matter. Thus, the court denies for now the Motion to Appoint Counsel.

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<sup>1</sup> ECF No. 2.

<sup>2</sup> See *Durre v. Dempsey*, 869 F.2d 543, 547 (10th Cir. 1985).

<sup>3</sup> See 28 U.S.C.S. § 1915(e)(1) (2021); *Shabazz v. Askins*, 14 F.3d 533, 535 (10th Cir. 1994).

<sup>4</sup> *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

<sup>5</sup> *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (internal quotation marks omitted).

Next, Mr. Ajayi has filed a Motion for Default Judgment.<sup>6</sup> This motion is premature, as the court has not yet screened the complaint under 28 U.S.C. § 1915A (2021). Thus, the court has not ordered service of process on Defendants, and Defendants therefore have not failed to respond.

Mr. Ajayi has also filed a Motion to Set Aside Default<sup>7</sup> which is moot because no default has been entered against him. In the motion, he appears to believe that he missed the trial in this case, but no trial has been held or even scheduled.

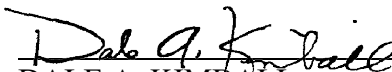
Finally, Mr. Ajayi has filed a Motion for Subpoena,<sup>8</sup> asking that evidence in this case be made available to him. The motion is denied because it is premature. The court will screen Mr. Ajayi's Amended Complaint in due course to determine whether to dismiss it or order it to be served on Defendants. *See* 28 U.S.C. § 1915A (2021). Plaintiff need not do anything further to trigger this process. *See id.* § 1915d ("The officers of the court shall issue and serve all process, and perform all duties in such cases.").

Accordingly, IT IS THEREFORE ORDERED that

- the Motion to Appoint Counsel [ECF No. 2] is DENIED;
- the Motion for Default Judgment [ECF No. 6] is DENIED,
- the Motion to Set Aside Default [ECF No. 8] is MOOT; and
- the Motion for Subpoena [ECF No. 10] is DENIED.

DATED this 3<sup>rd</sup> day of February 2025.

BY THE COURT:

  
DALE A. KIMBALL  
United States District Judge

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<sup>6</sup> ECF No. 6.

<sup>7</sup> ECF No. 8.

<sup>8</sup> ECF No. 10.